Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	CC Docket No. 00-45
	)	
Petition for Expedited Declaratory Ruling	)	
Regarding the Process for Adoption of Agreements	)	
Pursuant to Section 252(i) of the Communications	)	
Act and Section 51.809 of the Commission's Rules	)	

REPLY COMMENTS OF MCI WORLDCOM, INC.

Kecia Boney Lewis
Lisa B. Smith
Lisa Youngers
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-3040

Dated: April 11, 2000

TABLE OF CONTENTS

EXECUTIVE SUMMARY

MCI WorldCom sought clarification of the Commission's rules implementing section 252(i) of the act as a direct result of experiences with various ILECs that have sought to delay the adoption of agreements. Pursuant to section 1.2 of its Rules, the Commission has the authority to issue a declaratory ruling in order to terminate a controversy or remove uncertainty. The lack of agreement among ILECs, CLECs, and state commissions with respect to section 252(i) has led to confusion, uncertainty, and significant delays in local market entry.

Grant of MCI WorldCom's petition does not require new Commission rules, but rather necessitates a clarification of the Commission's existing Rule 809. A declaratory ruling by the Commission is necessary in order to clarify parties' obligations under section 252(i) and the Commission's rules in a manner that will remove uncertainty and allow section 252(i) to be uniformly implemented as fully intended. A Commission ruling in this case will play a critical step in the continuing development of local competition.

By its request for clarification, MCI WorldCom does not seek to deprive the state of any substantive role in the interconnection process. Section 252(i) allows state review and approval of all interconnection agreements, but the role of state commissions is limited in the area of adoption of agreements. State commission involvement is expected where there is consideration of legitimately related terms and conditions and ILEC challenges concerning 809(b). Nothing in the Act suggests that state commissions review agreements adopted pursuant to 252(i). In fact, section 252(i) does not mention any role for the state commission.

Adopted agreements or provisions of agreements must take effect on the day of notice. The Commission contemplated an adoption process that would be simple, straightforward and unencumbered by ILEC intransigence. In order to effect a section 252(i) adoption, a requesting

carrier need only make a notice filing to the ILEC. The only justification for delay in honoring a requesting carrier's adoption are to litigate the very limited exceptions for increased costs and technical infeasibility set forth in 809(b) and disputes regarding legitimately related terms and conditions. Almost every competitive carrier in this proceeding has delineated the barriers to entry the ILECs have erected by refusing to honor adoptions pursuant to section 252(i). In the event of an ILEC challenge, adoptions should be effective as of the date of the notice of adoption and the unchallenged portions should be honored immediately.

By permitting the effective date of adoption to be retroactive to the date of notice, the Commission would reduce the ILEC's incentives and ability to delay implementation of an interconnection agreement or provisions therein by raising frivolous objections to a section 252(i) adoption. Similarly, a retroactive date will serve to discourage ILECs from pursuing meritless claims under section 51.809(b). Neither the Act nor the Commission's rules should be read to allow ILECs the ability to receive a windfall by stalling the adoption of an agreement for reasons that may later be deemed as having no merit.

The Commission determined that section 252(i) of the Act entitled a requesting carrier to "pick and choose" provisions of existing interconnection agreements for incorporation or development of an interconnection agreement. The Commission noted that the determination regarding the permissibility of adopting provisions versus entire agreements should be treated on a consistent national basis, a view later affirmed by the United States Supreme Court. In implementing its rule, section 51.809(a), the Commission did not distinguish between the adoption of entire agreements and agreements constructed by the adoption of provisions from multiple agreements.

MCI WorldCom strongly disagrees with the ILECs' claim that certain interconnection agreements may be unavailable for adoption. As long as the original carrier operates under an agreement, that agreement should be available for adoption. ILECs do not have the right under section 51.809(c) to claim that certain agreements or provisions thereof are no longer available for adoption by other carriers. In addition, MCI WorldCom opposes any time limitation for adoption of an interconnection agreement that has not yet expired. If a CLEC wants the benefit of a provision of an agreement for one day, it has a statutory right to such an adoption. Agreements that have been extended by "evergreen" clauses that permit automatic extension of agreements should be made available for adoption. As long as one carrier is receiving the benefits of an interconnection agreement, the Act dictates that the provisions of that agreement must be made available to any requesting carrier.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	CC Docket No. 00-45
	)	
Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules	)	

REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. ("MCI WorldCom") hereby submits its reply to the comments filed in response to the above-captioned petition.[1]

I. INTRODUCTION

The comments filed in response to MCI WorldCom's petition overwhelmingly demonstrate the need for expedient Commission action to establish uniform practices for the adoption of interconnection agreements pursuant to section 252(i) of the Telecommunications Act of 1996 (the "Act"). The record reflects the conflicting interpretations of section 252(i) and the Commission's implementing rules by the state commissions and incumbent local exchange carriers ("ILECs"). A definitive statement by the Commission is greatly needed in order to remove the regulatory uncertainty surrounding the section 252(i) adoption processes.

Despite the Commission's prior declarations in the Local Competition Order[2] and the Global NAPs decisions,[3] a number of obstacles have been developed for what should

[1] Revised Petition of MCI WorldCom, Inc. for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules, CC Docket No. 00-45 (filed March 7, 2000) ("Petition").

be a relatively straightforward adoption process. However, instead of the nondiscriminatory, procompetitive and expedient adoption process envisioned by Congress, competitive carriers ("CLECs") have been stonewalled by the incumbent local exchange carriers ("ILECs") and a patchwork of inconsistent state commission procedures as they have sought to adopt agreements. This combination of disparate state commission interpretations and ILEC manipulations has frustrated competitive carriers' ability to immediately adopt agreements pursuant to section 252(i).

The lack of uniformity among state commissions regarding the process for adoptions exacerbates the problem that requesting carriers are having with incumbent carriers.[4] ILECs use the state commission process, whether one exists or not, to introduce countless delays into the adoption process. Moreover, before the issue of a state commission process even arises, the ILECs are impermissibly imposing restrictions and qualifications on requesting carriers' rights to adopt agreements. None of the ILECs' claims are justified and in fact, have already been rejected by the courts and the Commission. Many CLECs do not have the time and resources to negotiate agreements with carriers, much less needlessly litigate adoptions of agreements that have already been approved by the state commission. Indeed, the purpose of section 252(i) was to allow requesting carriers to avoid the lengthy negotiation and approval process associated

---

[2] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996).

[3] Global NAPs South, Inc., Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc., CC Docket No. 99-198 ("Global NAPs-Virginia"); Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc., CC Docket No. 99-154 ("Global NAPs-New Jersey").

[4] By way of example, MCI WorldCom has adopted agreements between other carriers and ILECs. The "approval process" for the adopted agreements ranged from one day to 21 weeks. In addition, MCI WorldCom has been waiting for an agreement to be approved by a state commission, which has been pending for 35 weeks (and counting).

with section 251. The parties' divergent interpretations of section 252(i) and the Commission Rules signify a dire need for Commission action. A Commission ruling will play a critical step in the continuing development of local competition.

II. A DECLARATORY RULING IS NECESSARY TO RESOLVE UNCERTAINTY REGARDING ADOPTIONS PURSUANT TO SECTION 252(i)

A. The Act Contemplates Uniform Application of Section 252(i)

Despite the claims of some of the ILECs and states,[5] a declaratory ruling is appropriate in this instance. MCI WorldCom felt compelled to seek clarification of this Commission's rules implementing section 252(i) of the Act as a direct result of its experiences with various ILECs that have sought to delay and/or thwart the adoption of agreements. As evidenced by their comments, many other members of the CLEC community are experiencing the same difficulties and unnecessary delays in the adoption of agreements for the same reasons.[6] The Petition is not simply directed at MCI WorldCom's pending complaints against Ameritech, as suggested by the Telecommunications Regulatory Board of

---

[5] Comments of Public Service Commission of Wisconsin, CC Docket No. 00-45 at 5 (filed March 31, 2000) "Wisconsin Commission Comments"); Comments of SBC Communications, Inc., CC Docket No. 00-45 at 5 (filed March 31, 2000) ("SBC Comments"); Comments of BellSouth Corporation, CC Docket No. 00-45 at 2 (filed March 31, 2000) ("BellSouth Comments").

[6] See, e.g., Comments of Advanced Telcom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network Inc., Rhythms NetConnections, Teligent Services, Inc., and the Association for Local Telecommunications Services, CC Docket No. 00-45 at 2-3 (filed March 31, 2000); Comments of Voicestream Wireless Corp., CC Docket No. 00-45 at 4-5 (filed March 31, 2000) ("Voicestream Comments"); Comments of Williams Local Network, Inc., CC Docket No. 00-45 at 3-4 (filed March 31, 2000) ("Williams Comments"); Comments of AT&T Corp., CC Docket No. 00-45 at 2 (filed March 31, 2000) ("AT&T Comments"); Joint Comments of BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc., @Link Networks, Inc., and DSL.Net, Inc., CC Docket No. 00-45 at 2 (filed March 31, 2000); Comments of the Personal Communications Industry Association, CC Docket No. 00-45 at 4 (filed March 31, 2000) ("PCIA Comments"); Comments of the Competitive Telecommunications Association, CC Docket No. 00-45 at 3-4 (filed March 31, 2000) ("Comptel Comments").

Puerto Rico and SBC Communications,[7] but rather has far reaching implications for the expeditious adoption of agreements throughout the country. The Petition represents MCI WorldCom's attempt to generally ensure uniformity and certainty for a process that has become bogged down with confusing procedures and anti-competitive incumbent behavior.[8]

Notably, the ILECs have underscored the need for a declaratory ruling by raising substantive issues concerning 252(i) adoptions that have little to do with state commission processes. SBC and other ILECs seek to unilaterally impose their own restrictions on carriers' right to adopt agreements, such as requirements for execution of contracts, designation of available agreements and provisions,

---

[7] Telecommunications Regulatory Board of Puerto Rico Comments at 4; SBC Comments at 3.

[8] MCI WorldCom notes that SBC again raises specious arguments that have already been rejected in an attempt to deny the adoptions of agreements. Incredibly, SBC argues that requesting carriers, as a matter of law, do not have a right to adopt an entire agreement. As an initial matter, section 252(i) on its face requires ILECs such as SBC to make available to requesting telecommunications carriers an approved interconnection agreement in its entirety. SBC Comments at 22. Moreover, the Commission made clear in Global NAPs-New Jersey, that requesting carriers can adopt an entire agreement *or* portions of an agreement. See, Global NAPs at 5, n. 25 (emphasis added). Finally, the U.S. Supreme Court has affirmed the Commission's findings with respect to the implementation of section 252(i) of the Act. SBC simply refuses to recognize and comply with settled law.

The right to adopt an entire agreement includes the reciprocal compensation provisions of that agreement. Like SBC, Bell Atlantic claimed that Global NAPs could not opt-into provisions relating to reciprocal compensation because section 252(i) only permits carriers to opt-into provisions of agreements based on section 251. The Commission rejected Bell Atlantic's argument, re-affirming that its rules establish only two limited exceptions to the right of carriers to opt-into an interconnection agreement. Global NAPs-Virginia at n. 25; Global NAPs-New Jersey at n. 27. In addition, SBC wrongly argues that reciprocal compensation provisions do not constitute terms and conditions under which interconnection, service or network elements are provided. Reciprocal compensation provisions establish the terms and conditions under which the transport and termination services are provided. 47 U.S.C. § 251(b)(5), and the compensation terms governing mutual exchange of traffic achieved through interconnection. Local Competition Order, 11 FCC Rcd 15590, ¶ 176,

form agreements, and reservation of rights.[9] The ILECs' claims are baseless and the restrictions are nothing more than manufactured roadblocks to local market entry designed to thwart the advancement of competition.

Pursuant to section 1.2 of its Rules, the Commission has the authority to issue a declaratory ruling in order to terminate a controversy or remove uncertainty. 47 C.F.R. Section 1.2. As many CLECs argued, the lack of agreement among ILECs, CLECs and state commissions as to the rights and responsibilities of carriers and state commissions with respect to section 252 (i) has led to confusion, uncertainty, unnecessary expenditures and significant delays in local market entry.[10] Accordingly, many commenters agree that a declaratory ruling to resolve this uncertainty is appropriate.[11]

B. The Petition Seeks Clarification of Existing Law

Contrary to the arguments of some commenters, grant of MCI WorldCom's petition does not require new Commission rules, but rather necessitates a clarification of the Commission's existing Rule 809.[12] The Commission has already asserted jurisdiction over 252(i) adoptions in its Local Competition Order and Global NAPs decisions, while delegating limited authority to the states for resolution of ILEC challenges to an adoption.[13] It is apparent, however, that the FCC needs to clarify its Local Competition Order[14] and the declarations made in Global NAPs.[15] While some commenters

---

[9] AT&T Comments at 4, 7; Joint Comments of Connect Communications, PacWest, GlobalCom and RCN at 4-5; Joint Comments of Advanced Telecom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network, Inc., Rhythms NetConnections, Teligent Services Inc., and ALTS at 6.

[10] Joint Comments of Focal Communications Corp. Level 3 Communications LLC, Mpower Communications Corp, Adelphia Business Solutions, and CoreComm at 4.

[11] AT&T Comments at 2.

[12] SBC Comments at 9; Wisconsin Commission Comments at 6.

[13] As MCI WorldCom noted in its petition, that delegated authority is limited to state commission review of issues involving increased cost, technical feasibility and legitimately related terms as a result of the adopted agreement.

[14] Local Competition Order, 12 FCC Rcd 16141, ¶ 1321.

have attempted to minimize the governing effect of Global NAPs,[16] the fact of the matter is that, in the context of the ruling in that case, the Commission clearly delineated guidelines describing the manner in which requesting carriers should be able to exercise their adoption rights pursuant to section 252(i).

At a minimum, by virtue of the range of implementation efforts and the less than expedited processes that have been developed, the record establishes that there is great uncertainty surrounding the process for adoptions of agreements and authority for state approval pursuant to 252(i).[17] This lack of uniformity has enabled ILECs to further impede the adoption process while hiding behind alleged state mandates.[18] ILECs exploit the conflicting, confusing or nonexistent state commission processes to delay competitive entry or continued service by requesting carriers.[19]

The record in this proceeding overwhelmingly demonstrates the parties' divergent interpretations of section 252(i) and the Commission's rules regarding adoption of interconnection agreements. A declaratory ruling by the Commission is necessary in order to clarify parties' obligations under section

---

[15] Global NAPs-Virignia at n. 27 (GNAPs should have been able to exercise its opt-in right under section 252(i) on an expedited basis. . . . for example, a carrier should be able to notify the local exchange carrier that it is exercising this right by submitting a letter to the local exchange carrier identifying the agreement (or portions of an agreement) it will be using and to whom invoices, notices regarding the agreement and other communication should be sent."); Global NAPs – New Jersey, at n.25.

[16] SBC Comments at 15; Wisconsin Commission Comments at 7.

[17] Comments of AirTouch Paging at 6-10; Joint Comments of Advanced Telcom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network, Inc., Rhythms NetConections, Teligent Services Inc., and ALTS at 6.

[18] Joint Comments of Advanced Telcom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network, Inc., Rhythms NetConections, Teligent Services Inc., and ALTS at 6; Comments of Global NAPs and Universal Telecom, CC Docket No. 00-45 at 2-4 (filed March 31, 2000).

[19] Joint Comments of Connect Communications, PacWest, Globalcom and RCN at 4-5; Joint Comments of Advanced Telcom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network, Inc., Rhythms NetConections, Teligent Services Inc., and ALTS at 6; Joint Comments of BroadSpan Communications, @Link Networks, and DSL.Net at 6.

252(i) and the Commission's rules in a manner that will remove uncertainty and allow section 252(i) to be uniformly implemented as fully intended. A Commission ruling in this case will play a critical step in the continuing development of local competition.

III. STATE COMMISSION APPROVAL OF PREVIOUSLY APPROVED AGREEMENTS IS UNNECESSARY

As MCI WorldCom established in its Petition, neither the language in section 252(i) of the Act nor Rule 809(a) of the Commission's Rules authorizes state commission approval of a requesting carrier's adoption of an already-approved agreement.[20] Most commenters (including U S WEST, The Washington Utilities and Transportation Commission and the New York State Department of Public Services) agree that it is unnecessary for state commissions to re-approve interconnection agreements that they have already approved.[21] Such re-approval adds unnecessary delay to adoptions because the adopted agreements or provisions in those cases are exactly the same as the agreements and provisions already approved by the states. Such re-approval is especially unwarranted in light of the Commission's statement that agreements should be made available to requesting carriers on an expedited basis.[22] Redundant action by the states frustrate Congress' and the Commission's goal of creating an expedient means for requesting carriers to adopt agreements to facilitate CLEC entry into the local market.

MCI WorldCom's request for clarification does not deprive the state commissions of any substantive role in the interconnection process.[23] In order for an interconnection agreement to be

---

[20] Petition at 14-17.

[21] Letter, dated March 31, 2000, from Lawrence G. Malone, General Counsel, New York Department of Public Service Comments to Hon. Magalie Roman Salas, Secretary, Federal Communications Commission at 1 (state commission review of an unchallenged, previously approved agreement may be duplicative since that agreement has been approved, albeit between different parties) ("NYDPS Letter"); U S WEST Comments at 3; Comments of the Washington Utilities and Transportation Commission, CC Docket No. 00-45 at 3 (filed March 31, 2000).

[22] Local Competition Order, 12 FCC Rcd 16141, ¶ 1321.

[23] Wisconsin Commission Comments at 6-7; Comments of the Telecommunications Regulatory Board of Puerto Rico at 3; Comments Submitted by the Oklahoma

available for adoption, the agreement must satisfy section 252 of the Act, a statutory scheme which grants states the option of acting to review and approve all interconnection agreements. As MCI WorldCom demonstrated in its Petition, except for consideration of "legitimately related terms and conditions" and ILEC challenges concerning the narrow range delineated in Rule 809(b), the role of state commissions has reasonably been limited in the area of adoption of agreements. As AirTouch correctly pointed out, section 252 only requires two types of agreements to be approved: agreements voluntarily negotiated under section 252(a) and arbitrated agreements under section 252(b).[24] The Act clearly grants separate statutory authority for adopted agreements under section 252(i), which contains no approval requirement. In fact, this Commission has determined that adopted agreements are neither arbitrated nor negotiated.[25] Further, the Commission has concluded that "[n]egotiation is not required to implement a section 252(i) opt-in arrangement; indeed, neither party may alter the terms of the agreement."[26] We agree with those commenters that have stated that nothing in the Act suggests that state commissions review agreements adopted pursuant to section 252(i).[27] In fact, section 252(i) does not mention any role for the state commission.[28] Instead, section 252(i) addresses only the LECs' responsibilities to make available previously approved agreements.[29] It was the Commission that carved

---

Corporation Commission to the Petition of MCI WorldCom Telecommunications Services, Inc. for Declaratory Ruling, CC Docket No. 00-45 at 4; SBC Comments at 14.

[24] Comments of AirTouch Paging, CC Docket No. 00-45 at 12-13 ("AirTouch Comments").

[25] Global NAPs - Virginia at ¶ 4; Global NAPs – New Jersey, at ¶ 4.

[26] Global NAPs-Virginia at ¶ 4.

[27] Comments of Focal Communications Corp., Level 3 Communications LLC, Mpower Communications Corporation, Adelphia Business Solutions, and CoreComm, CC Docket No. 00-45 at 4.

[28] To be clear, MCI WorldCom agrees that a requesting carrier should concurrently file its notice of adoption with both the ILEC and the state commission in order to satisfy the requirements under section 252(h) of the Act.

[29] Comments of Focal Communications Corp., Level 3 Communications LLC, Mpower Communications Corporation, Adelphia Business Solutions, and CoreComm at 5.

out a limited role for state commissions in the section 252(i) process. And it is the Commission that should now clarify the parameters of that role.

The record amassed thus far demonstrates a clear need for uniform rules and guidance on the adoption of interconnection agreements under section 252(i). As AirTouch aptly stated, uniform standards and guidelines will eliminate the patchwork of inconsistent rulings with which carriers are now faced.[30] Even in states where the commission does not have rules on 252(i) adoptions, ILECs have exploited the lack of uniformity and clarity regarding adoptions by insisting that the state commission must nevertheless approve the agreement. The ILECs already delay and abuse the inherent uncertainty in the adoption process. State commissions should not contribute to the problem. Thus far, in many instances, state processes have proven to be unnecessary, inconsistent, time-consuming and expensive. Many new entrants cannot afford to expend valuable financial and human resources to go through such processes, and nor should they be required to do so.[31]

IV. ADOPTED AGREEMENTS OR PROVISIONS OF AGREEMENTS MUST TAKE EFFECT ON THE DAY OF NOTICE

The Commission has previously indicated, and many parties agree, that in order to effect a section 252(i) adoption, a requesting carrier need only make a notice filing to the ILEC.[32] The Commission contemplated an adoption process under section 252(i) that would be simple, straightforward and unencumbered by ILEC intransigence.

As discussed above, the language of section 252(i) is directed at the obligations of the ILECs. Section 252(i) requires ILECs to make available any interconnection, service or network element provided under an approved agreement upon the same terms and conditions as provided in the original agreement. Similarly, Rule 809(a) requires ILECs to make available, without unreasonable delay, terms and conditions of previously approved agreements. The only justification for a delay in honoring a

---

[30] AirTouch Comments at 10.

[31] Id. at 4.

[32] Global NAPs- New Jersey at n. 25; Global NAPs-Virginia at n. 27.

requesting carrier's adoption are to litigate the very limited exceptions for increased costs and technical infeasibility set forth in Rule 809(b) and disputes regarding legitimately related terms and conditions as set forth in paragraph 1321 of the Local Competition Order.[33]

The reality is that the ILECs have attempted to create "exceptions" to their obligation to honor requesting carriers' adoptions upon receipt of notice. Almost every competitive carrier in this proceeding has delineated the barriers to entry that the ILECs have erected by refusing to honor adoptions pursuant to section 252(i). The reasons are abundant.[34] In addition to arguing that 252(i) adoptions must be approved by the state commission, ILECs claim that before an agreement can be effective, the agreement must be re-typed, names must be changed in the agreement, form agreements must be signed, interconnection data must be exchanged and legal rights must be reserved.[35] Contrary to the claims of the ILECs and the Wisconsin PSC, ILECs do not need time to make any changes to an

---

[33] As stated above, a notice of adoption like that sent by MCI WorldCom is sufficient to effect a 252(i) adoption. SBC and Bell Atlantic, however, claim that interconnection agreements are not binding unless they are executed. SBC Comments at 22; Bell Atlantic Comments at 2. There is nothing in the Act, the Commission's Rules or orders that suggests that carriers must execute a new agreement before an adoption can be deemed effective. In fact, this Commission has found that parties need not negotiate before being permitted to adopt any agreement. See, Global NAPs at ¶ 4.

[34] GTE, for example, claims that CLECs are not experiencing any unreasonable delays in obtaining effective adoptions. GTE Comments at 7. To the contrary, MCI WorldCom has often experienced substantial delays when trying to adopt an unchallenged agreement involving GTE. It is worthy to note that when GTE drafts the "short form agreement' described in its comments, it adds an additional two-week delay to the adoption while it composes such an agreement, which is typically filled with reservations of rights and modifications to the underlying agreement. GTE Comments at 3.

[35] AT&T Comments at 4 (describing Bell Atlantic's requirement of a form agreement and state commission approval); Comments of Connect Communications, PacWest, Globalcom and RCN, CC Docket No. 00-45 at 4 (describing ILEC insistence on taking weeks to rewrite agreements to replace the name of a CLEC); Joint Comments of BroadSpan Communications, @Link Networks, and DSL.Net at 6 (discussing ILECs delays of several months to produce an agreement with simple changes, attempts to amend agreements with "clarifications"); Comments of the Telecommunications Resellers Association, CC Docket No. 00-45 at 6 (filed March 31, 2000) ("TRA Comments").

agreement before honoring the adoption.[36] All of the above-listed functions can be carried out without postponing the effectiveness of the adopted agreement.[37] As some commenters note, certainly in the age of electronic word processing, re-typing and changing names cannot be a time-consuming task.[38] As discussed below, there should also be no need for a reservation of legal rights, which amounts to an inappropriate modification of the agreement.[39] Moreover, in most instances, requesting carriers are already interconnected with ILECs, eliminating the need for delays due to the exchange of information needed for points of interconnection, pre-ordering, ordering, billing and other functions.[40]

An incumbent LEC can easily frustrate requesting carriers' attempts to adopt state-approved interconnection agreements by including information in interconnection agreements that the incumbent

---

[36] Wisconsin PSC Comments at 5 (claiming that ILECs need a reasonable amount of time to make the necessary changes required to fulfill the terms and conditions of an agreement being opted-into by a requesting carrier); GTE Comments at 3-4; Bell Atlantic Comments at 4.

[37] For example, MCI WorldCom attempted to adopt an agreement and GTE claimed that MCI WorldCom's adoption would not be effective for several months because "changes" needed to be made to the agreement. GTE also claimed that MCI WorldCom needed to sign a separate document setting forth the rights to be reserved by GTE. When later confronted with a potential enforcement action, GTE conceded that the necessary changes were administrative ones that could be completed with 3-5 days of the notice of adoption.

[38] See Comments of PacWest at 4, 6.

[39] In regard to the issue of limited objections an ILEC may raise, it is also important to note that MCI WorldCom disagrees with one commenter's suggestion that change in governing law should excuse ILECs from complying with an adoption. Agreements typically contain change in law provisions, which would obviously apply where entire agreements are adopted, but would also apply as a legitimately related term and condition to adopted provisions. There is therefore no need for an express exception for changes in the law.

[40] It is worth noting that while some commenters suggest that it is impossible for adopted agreements to take immediate effect, that is exactly what occurred in many instances throughout the country after state commissions completed their approval processes under section 252. The agreements were deemed immediately effective, even where some details still needed to be implemented.

LEC claims is individualized or tailored to a particular carrier. Later, the ILECs can argue as did SBC, that these details, although not vital to the adoption process, require amendment of the agreement and subsequent state approval solely for the purposes of delay.

Some ILECs have argued that they should not be required to honor an agreement where it is technically infeasible.[41] As MCI WorldCom has already noted, Rule 809(b) allows ILECs to object to an adoption before the appropriate state commission. MCI WorldCom is in no way suggesting that ILECs must do something that is technically impossible. However, there are ways to prevent anticompetitive behavior. A retroactive effective date will serve to both limit meritless objections and to allow for a true-up for CLECs in the event that the ILEC's objections are unsuccessful.

In addition to raising various "exceptions" to delay their obligation to honor adoptions, ILECs are also using the state commission processes, or alleging the existence of a state commission process where there is none, as a delaying tactic. As several commenters pointed out, many state commissions do not have processes tailored for section 252(i) adoptions, and others have processes that are ambiguous and time-consuming. Furthermore, in the event of a dispute, many state commission processes provide for a formal dispute resolution mechanism, which is also lengthy, time-consuming and expensive. The ILECs seize any opportunity to create an issue over which a "dispute" will arise, purportedly requiring resolution by the state. That is because ILECs have every incentive to impede carriers' adoptions of agreements because they have everything to gain by slowing down the 252(i) adoption process.[42]

---

[41] SBC Comments at 29; Bell Atlantic Comments at 3-4.

[42] The Commission has concluded that "[b]ecause an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. . . . An incumbent LEC has the ability and incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network . . . .." Local Competition Order, 11 FCC Rcd at 15508, ¶ 10.

V. IN THE EVENT OF AN ILEC CHALLENGE, ADOPTIONS SHOULD BE EFFECTIVE AS OF THE DATE OF THE NOTICE OF ADOPTION, AND THE UNCHALLENGED PORTIONS SHOULD BE HONORED IMMEDIATELY

MCI WorldCom strongly disagrees with Bell Atlantic's claim that, until the merits of a carrier's request to adopt an agreement are resolved, there is no agreement between the requesting carrier and the ILEC. Contrary to the ILECs' claim that there are several grounds for objections to adoptions,[43] ILEC objections are limited to the exceptions stated in Rule 809(b) and the issue of legitimately related terms and conditions. As the United States Supreme Court recognized, Rule 51.809(b) provides only three exceptions to requesting carriers' unfettered right to adopt agreements pursuant to section 252(i): increased cost, technical feasibility and legitimately related terms and conditions.[44] The state commissions may consider no additional objections. As Global NAPs and Universal Telcom point out, the Commission has limited the acceptable reasons that ILECs can object to adoptions to discourage stonewalling and anti-competitive behavior.[45]

The commenters have demonstrated that, despite these express limitations, ILECs persistently raise impermissible objections to adoptions of agreements or provisions of agreements even before raising them to state commission. We agree with commenters that suggest that permissible claims must be raised before the state commission within a reasonable period of time (e.g., 10 days from receipt of the notice of adoption).[46] Otherwise, ILECs should be deemed to have waived the right to raise any objections to the adoption. Furthermore, if the ILEC's challenge to the adoption is unsuccessful, the adoption of the affected provisions should be retroactively effective.

---

[43] SBC Comments at 18-29; GTE Comments at 6; Bell Atlantic Comments at 3-4.

[44] AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721, 738 (1999).

[45] Joint Comments of Global NAPs and Universal Telcom at 6-7.

[46] See, e.g., Williams Comments at 6; AT&T Comments at 10; Joint Comments of BroadSpan Communications, @Link Networks and DSL.Net at 7.

Many commenters support MCI WorldCom's request for a retroactive effective date of an adoption where the ILEC's challenge to an adoption fails.[47] By permitting the effective date of adoption to be retroactive to the date of notice, the Commission would reduce the ILECs' incentives and ability to delay implementation of an interconnection agreement or provisions therein by raising frivolous objections. It would contradict the principles of fair play and equity to reward ILECs for such anticompetitive behavior.

MCI WorldCom firmly believes that a retroactive effective date will serve to discourage ILECs from pursuing meritless claims under section 51.809(b). The comments validate MCI WorldCom's concerns. The record is replete with examples of stall tactics by ILECs.[48] As the commenters suggest, where adopted agreements are allowed to go into effect only after approval by a state commission, the ILECs have powerful incentives to erect every conceivable roadblock to the adoption process, particularly when terms exist that they dislike.[49] If an ILEC is successful in stalling an adoption, it can use the leverage of delay to obtain terms through forced negotiation that it might not have received as a result of arbitration. Neither the Act nor the Commission's rules should be read to allow ILECs the ability to receive a windfall by stalling the adoption of an agreement for reasons that may later be deemed as having no merit.

Moreover, in its Petition, MCI WorldCom recognized that state commissions possess the authority to determine whether (1) adoption of an agreement or provisions therein would cause the ILEC to incur greater costs, (2) the adoption is technically feasible or (3) additional terms and

---

[47] TRA Comments at 10; Joint Comments of BroadSpan Communications, @Link Networks and DSL.Net at 7-8; CompTel Comments at 6-8; AT&T Comments at 12.

[48] Joint Comments of BroadSpan Communications, @Link Networks, and DSL.Net, at 6; AT&T Comments 4-6; Joint Comments of Connect Communications, PacWest, Gobalcom and RCN at 4-6; Joint Comments of Advanced Telcom Group, Inc., Electric Lightwave, Inc., Jato Communications Corp., NEXTLINK Communications, Inc., New Edge Network, Inc., Rhythms NetConnections, Teligent Services and ALTS Comments at 12-15.

[49] AirTouch Comments at 11-12; AT&T Comments at 12-14; TRA Comments at 10.

conditions should be adopted. We argued, however, that any state proceedings in this regard should not delay adoption of an entire agreement.[50] ILECs should not be able to delay the effectiveness of an entire adopted agreement simply by raising the specter of Rule 809(b) objections.

Some ILECs, however, believe that it is impractical to allow the remaining unchallenged portions of an agreement to go into effect.[51] This comes as no surprise. The ILECs would have the Commission believe that, out of an entire agreement, not one provision could be implemented due to an ILEC's challenge of other provisions. Again, the ILECs have very limited objections that they can raise.[52] Given the ILECs' tendency to manufacture excuses in order to delay adoptions, giving effect to the unchallenged portions of the agreement will at least prevent the ILECs from delaying the entire adoption.

VI. PICKING AND CHOOSING IS CONSISTENT WITH THE ACT AND THE COMMISSION'S RULES

A. A Carrier's Right to Pick and Choose Provisions has been Upheld by the Supreme Court

A few commenters suggest that if a requesting carrier "picks and chooses" provisions from multiple interconnection agreements the resulting agreement must be approved by the state commission pursuant to section 252 of the Act. These arguments are raised by ILECs merely to delay local market entry by requesting carriers. Indeed, these commenters have simply rehashed the same arguments raised and rejected by both the Commission in the Local Competition Order and the United States Supreme Court in AT&T v. Iowa Utilities Board.[53] These arguments must again be rejected here. In its Local Competition Order, the Commission determined that section 252(i) of the Act entitled a requesting carrier to "pick and choose" provisions of existing interconnection agreements for incorporation or

[50] Petition at 23-24.

[51] Comments of Bell Atlantic at 5; U S WEST Comments at 10.

[52] MCI WorldCom points out that ILECs can object to adoptions pursuant to Rule 809(b). This does not mean, however, that the effective date cannot be retroactive.

[53] AT&T v. Iowa Util. Board, 119 S. Ct. at 738.

development of an interconnection agreement.[54] Although some parties, notably the ILECs, argued that section 252(i) should be read to require CLECs to adopt entire agreements, the Commission disagreed. Moreover, it refused to leave the determination regarding the permissibility of adopting provisions versus entire agreements to the state commissions, noting that this issue should be treated on a consistent national basis.[55] Later, the United States Supreme Court explicitly affirmed this view.[56]

B. A Pick and Choose Agreement is no Different Than Adopting an Entire Agreement

The Commission contemplated an expedited process for the adoption of interconnection agreements or provisions therein. In its implementing rule, section 51.809(a), the Commission did not distinguish between the adoption of entire agreements and agreements constructed by the adoption of provisions from multiple agreements. Indeed, the Commission clearly stated otherwise. In the Local Competition Order, the Commission specifically concludes that "...[a] carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests..."[57] Therefore, according to the Commission, state approval is not required for either form of adoption.

Several ILECs take on a very patronizing tone with respect to the CLECs' ability to make strategic decisions about their needs for interconnection agreements. According to U S WEST, CLECs that adopt individual provisions as opposed to entire agreements take the risk of having provisions expire at different times.[58] We see no problem with this approach. To the extent that CLECs choose terms and conditions from various agreements, the expiration dates of the various underlying agreements

---

[54] "We conclude that the text of section 252(i) supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements." Local Competition Order, 11 FCC Rcd 16137, ¶ 1310.

[55] Id., ¶ 1309.

[56] 119 S. Ct. at 738.

[57] Local Competition Order, 11 FCC Rcd 16141, ¶ 1321.

[58] U S WEST Comments at 5.

would apply. CLECs are eminently qualified to decide whether they can live with the benefit of receiving one provision for a shorter period of time than another in an interconnection agreement.

Finally, should the Commission determine contrary to its prior findings that the adoption of provisions from interconnection agreements requires state approval, we would urge this Commission to require states only to consider ILEC objections pertaining to increased cost, technical feasibility and legitimately related terms and to make those provisions retroactive to the date of the notice adoption. Again, we believe that such a requirement will provide a disincentive for anti-competitive ILEC behavior as CLECs seek to adopt provisions from interconnection agreements.

VII. AS LONG AS THE ORIGINAL CARRIER OPERATES UNDER AN AGREEMENT, THAT AGREEMENT SHOULD BE AVAILABLE FOR ADOPTION

MCI WorldCom strongly disagrees with the ILECs that claim that certain interconnection agreements may be unavailable for adoption.[59] As an initial matter, ILECs do not have the authority to determine which agreements are available for adoption by requesting carriers. It is, however, in the ILECs' interest to essentially preclude requesting carriers from receiving the benefits of interconnection agreements whenever ILECs do not like all of the provisions in those agreements or simply do not wish to honor an agreement. Clearly, the procompetitive purposes of section 252(i) would be frustrated and the law plainly violated if ILECs, as they suggest, are permitted to designate which agreements are available for adoption by requesting carriers.

A. ILECs Do Not Have the Right Under Section 51.809(c) To Claim That Certain Agreements or Provisions Thereof are No Longer Available For Adoption By Other Carriers

SBC relies upon an interpretation of the language of rule 51.809(c) that is arbitrary, inconsistent with the language of the Local Competition Order, and contrary to the goals of the Act.[60] Rule 51.809(c) requires terms and conditions regarding interconnection, service, and network elements to

---

[59] SBC Comments at 28-31; GTE Comments at 6; Bell Atlantic Comments at 4.

[60] SBC Comments at 28-31.

"remain available for use by telecommunications carriers . . . for a reasonable period of time after the approved agreement is available for public inspection." 47 U.S.C. § 51.809(c). SBC has incorrectly assumed that the phrase "reasonable period of time" reflects some absolute measure of the number of months or years an agreement has been in place or remain before an agreement expires.

Instead, MCI WorldCom believes that the Commission's findings substantiate our position. The Local Competition Order makes clear that the Commission's choice to impose a "reasonable period of time" constraint on elections under section 252(i) had nothing to do with a measure of time, but was intended to address "incumbent LEC concerns over technical incompatibility" and to prevent the imposition of "an agreement or term upon an incumbent LEC if the technical requirements of implementing that agreement or term have changed."[61] Such an interpretation is entirely consistent with section 51.809(b), which excuses incumbent LECs from their obligations under 252(i) if they are able to prove to a state commission that it is not technically feasible or conditions have changed such that the provision of interconnection, a telecommunications service, or unbundled network element would be more costly than it had been for the carrier in the original agreement. Absent such proof by an incumbent LEC, agreements or terms must be made available to requesting telecommunications carriers as long as such agreements or terms are available to the original contracting CLEC or another adopting CLEC. Any other interpretation would violate the non-discrimination goals of the 1996 Act.[62]

Finally, MCI WorldCom notes that SBC contends that the agreements that MCI WorldCom has selected for 252(i) treatment were executed before TELRIC rates were adopted and such rates are therefore obsolete.[63] This does not matter, and the fluctuation in law is a fact of life in the local competition world. Interconnection agreements have always been subject to change of law provisions.

---

[61] Local Competition Order, 11 FCC Rcd at 16140, ¶ 1319.

[62] See, 47 U.S.C. §§ 251(c)(2)(D), (c)(3), (c)(4)(B), (c)(6) (1996).

[63] SBC Comments at 28-29.

Thus, SBC's contention is wholly irrelevant to MCI WorldCom's rights to adopt interconnection agreements.[64]

B. The Act and the Commission's Rules Allow CLECs to Adopt Agreements that have not yet Expired

MCI WorldCom opposes any time limitation for adoption of an interconnection agreement that has not yet expired. ILECs have an affirmative duty, pursuant to sections 251(c)(2)(D) and 251(c)(3) of the Act, not to discriminate in the provision of interconnection services or unbundled elements. The ILECs cannot meet this obligation by allowing certain carriers access to interconnection services and unbundled elements, but refusing them to others who are willing to take them under the same rates, terms and conditions. GTE and SBC suggest that CLECs should not be permitted to adopt expiring agreements.[65] We disagree. If a CLEC wants the benefit of a provision or agreement for one day, it has a statutory right to such an adoption.

Further, GTE begs the question of what constitutes an "expiring" agreement in today's environment. In many instances, interconnection agreements are subject to "evergreen" provisions that permit their automatic extension until such time as a new agreement is reached between the parties and approved by the respective state commission. U S WEST contends that CLECs should not be allowed to adopt agreements that have been extended by evergreen clauses.[66] Such a result is directly contrary to Congress' intent. Section 252(i) and the anti-discrimination provisions of the Act grant carriers the right to "step into the shoes" of another carrier for purposes of that carrier's interconnection agreement with

---

[64] SBC claims that, if the Commission believes that carriers are entitled to adopt agreements effective immediately, it would have preempted the Virginia Commission's decision concluding that it was too late for a CLEC to adopt an agreement. SBC Comments at 17. SBC wrongly interprets section 252(e)(5). Under section 252(e)(5), the Commission is limited to ruling on whether the state commission failed to act. The Commission does not reach the merits of the state commission's decision, but only reaches a determination as to whether the state commission acted.

[65] GTE Comments at 6; SBC Comments at 28-29.

[66] U S WEST Comments at 8.

an ILEC--as long as one carrier is receiving the benefits of an interconnection agreement, the Act dictates that the provisions of that agreement must be made available to any requesting carrier.[67]

Further, this Commission established three (3) specific reasons why an ILEC should be permitted to object to the adoption of an agreement--the duration of availability was not one of them. Despite GTE's claim to the contrary, there is no prohibition either in section 252(i) or the Commission's implementing rule that allows an ILEC to deem an agreement unavailable for adoption because of "imminent expiration".[68] SBC and U S WEST's contention that an ILEC may object to an adoption because an agreement is "stale" or because a reasonable period of time has expired from the time it was made available for public inspection is also without merit.[69] Again, such an approach would run afoul of the statutory mandate for non-discriminatory access to UNEs and interconnection services as certain carriers would be denied the benefit of provisions and interconnections realized by others.

---

[67] We do not mean to suggest that an ILEC cannot raise objections to the adoption pursuant to section 809(b) of the Commission's Rules. However, if no objection is raised or, if an objection is rejected by a sate commission there should be no reason why a CLEC that seeks to adopt an agreement should not be able to do so even when the agreement is subject to the evergreen provisions.

[68] GTE Comments at 6.

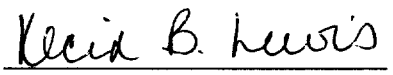
[69] SBC Comments at 28; U S WEST Comments at 7.

CONCLUSION

For the foregoing reasons, MCI WorldCom urges the Commission to expeditiously grant its Petition.

Respectfully submitted,

MCI WORLDCOM, INC.



Kecia Boney Lewis
Lisa B. Smith
Lisa Youngers
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-3040

Dated: April 11, 2000

Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this eleventh day of April, 2000, I have caused to be delivered by hand, a true and correct copy of MCI WorldCom, Inc's Reply Comments on the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Michelle Carey
Chief
Policy and Programming Planning Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

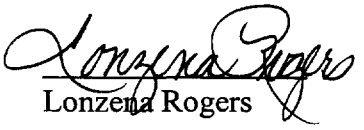
Robert Atkinson
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 5-C356
Washington, DC 20554

Julie Patterson
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 5-C143
Washington, DC 20554

Radhika Karmarkar
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 5-C831
Washington, DC 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

ITS, Inc.
445 Twelfth Street, SW
Washington, DC 20554



Lonzena Rogers